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Human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, submitted pursuant to Human Rights Council resolution 17/4.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

The present report explores the challenges faced in addressing the adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the United Nations Guiding Principles on Business and Human Rights. The focus is on how the Guiding Principles can bring clarity to the roles and responsibilities of States, business enterprises and indigenous peoples when addressing these impacts. It identifies gaps in implementation and challenges with regard to the State duty to protect against business-related human rights abuses, the corporate responsibility to respect human rights and the corresponding obligations relating to access to effective remedy. Lastly, the Working Group makes recommendations to States, business enterprises and indigenous peoples for the effective operationalization of the Guiding Principles with regard to the rights of indigenous peoples.

I. Introduction

1. The issue of business-related impacts on the rights of indigenous peoples has been addressed by a number of United Nations mechanisms, including the treaty bodies,[1] the Expert Mechanism on Indigenous Peoples (see A/HRC/EMRIP/2012/CRP.1 and A/HRC/21/55) and the Special Rapporteur on the rights of indigenous peoples (see A/HRC/24/41 and A/HRC/FBHR/2012/CRP.1). Such studies have highlighted the specific features of indigenous cultures, namely their deeply rooted spiritual and cultural special relationship to lands, territories and resources which indigenous peoples traditionally occupy or use. They have noted their overall social and economic marginalization, which limits their ability to successfully assert their rights. It has also been documented that indigenous peoples are among the groups most severely affected by the activities of the extractive, agro-industrial and energy sectors.[2] Reported adverse impacts range from impacts on the right of indigenous peoples to maintain their chosen traditional way of life,[3] with their distinct cultural identity[4] to discrimination in employment and access to goods and services (including financial services), access to land and security of land tenure (see A/65/281), to displacement through forced or economic resettlement and associated serious abuses of civil and political rights, including impacts on human rights defenders (see A/HRC/19/55), the right to life and bodily integrity.[5]

2. As indigenous peoples face a heightened risk of overall social and economic marginalization, some are even more vulnerable to human rights abuses connected to business activities and are excluded from agreement processes and other consultations that irrevocably influence their lives. Those abuses include indigenous women being described as third class citizens and often subjected to multiple forms of discrimination based on gender and ethnicity (see, among others, E/2004/43-E/C.19/2004/23, para. 3, and E/C.19/2012/3). While economic development may offer opportunities for indigenous women, it can deprive them of their existing livelihood, increase their vulnerability to abuse and violence and

[1] Committee on Economic, Social and Cultural Rights, general comments No. 7 (1997) on the right to adequate housing (art. 11.1 of the Covenant): forced evictions, para. 10, and No. 15 (2002) on the right to water, paras. 7 and 16; Committee on the Rights of the Child, general comments No. 11 (2009) on indigenous children and their rights under the Convention, para. 16, and No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.

[2] See A/HRC/18/35; A/HRC/22/43; A/HRC/FBHR/2012/4; and Cathal Doyle and Jill Cariño, "Making free prior & informed consent a reality: indigenous peoples and the extractive sector" (Philippine Indigenous Peoples Links, Middlesex University School of Law, Ecumenical Council for Corporate Responsibility, 2013).

[3] See E/CN.4/2006/97, para. 25; and Rights and Resources Initiative, "Impact of the extractive industry on the collective land and forest rights of peoples and communities: a summary", available from www.rightsandresources.org/documents/files/doc_5915.pdf.

[4] See, for example, Human Rights Committee, communication No. 511/1992, *Länsman and others v. Finland*, views adopted on 26 October 1994; and *Saramaka People v. Suriname*, judgment of the Inter-American Court of Human Rights, 12 August 2008.

[5] See Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* (Washington, D.C., 2011); and A/HRC/16/51/Add.3, para. 34.

undermine their social status.[6] Further groups at risk of multiple discrimination include indigenous children, older persons, young people, people with disabilities and lesbian, gay, bisexual and transgender people.

3. In addition, indigenous peoples feel the cumulative effect of vulnerabilities that individually affect other groups who face increased risk of human rights violations, such as peasants, seasonal workers, the landless and ethnic minorities. They are often the target of racial discrimination, are politically and economically marginalized, lack formal title over their land and are often excluded from the regular labour market. Indigenous women often suffer specific forms of discrimination or abuse, such as sexual violence.

II. United Nations Guiding Principles on Business and Human Rights

4. In its resolution 17/4, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights, the first comprehensive global standard on business and human rights, which have received widespread political support (see A/HRC/17/31, annex).

5. Within its mandate to give special attention to persons living in vulnerable situations (see resolution 17/4, para. 6 (f)), the Working Group decided to highlight the impact of business operations on the rights of indigenous peoples and to demonstrate the value of using the Guiding Principles in that specific context. The Working Group held an open consultation during its fourth session and received a number of submissions and suggestions from all stakeholders (see A/HRC/WG.12/4/1). Particular attention was paid to exchange and dialogue with indigenous peoples and their organizations and the views of the business community and individual business representatives were sought through meetings and workshops at various international forums. Reports produced by United Nations bodies mandated to protect the rights of indigenous peoples were examined as primary sources of interpretation and application of those rights. The Working Group wishes to express its sincere appreciation to all those who engaged with it throughout the development of the present report.

III. State duty to protect the rights of indigenous peoples

6. The commentary to Guiding Principle 1 reaffirms that States as parties to international human rights treaties are the principal bearers of human rights obligations and that they have a duty to respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. The duty to protect implies that States must take measures to prevent or end infringement upon the enjoyment of a given human right caused by third parties. In the context of the rights of indigenous peoples, such third parties are often business enterprises.

[6] The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notes that the use of counter-terrorism laws to suppress indigenous groups' claims for economic, social and cultural rights has particular adverse impacts for women within those communities, including in some instances, killings of indigenous women leaders (see A/64/211, para. 28).

7. The duty to protect is derived from existing human rights obligations or commitments that States have undertaken and that are widely recognized by the international community. The most significant international instruments in the field of the rights of indigenous peoples are the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.[7] Significant progress has been made in recent years and the rights of indigenous peoples to lands have been constitutionally or legally acknowledged.[8] Nonetheless, indigenous peoples continue to face many obstacles to the full enjoyment of their rights, beyond the limitations on rights as are prescribed by law and necessary to protect the rights and freedoms of others and in the interests, for example, of national security, public safety and public order.[9] In some countries, legislation concerning indigenous peoples or human rights is inconsistent with other sectoral laws, in particular those relating to mining or natural resource exploitation, which often fail to include provisions ensuring respect for the traditional ownership rights of indigenous peoples. Lastly, the gap in implementation between advances in the legislation and the current administrative, political or juridical practice of States remains of concern, in particular with regard to land programmes (see E/CN.4/2006/78).

8. The State duty to protect against human rights abuse by third parties is a standard of conduct. States are not therefore per se responsible for abuse of the rights of indigenous peoples by private actors. States may, however, breach the duty to protect where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress abuse by private actors.[10] States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations and, among other measures, should provide effective guidance to business enterprises on how to do so.[11] As noted in the commentary to Guiding Principle 3, States should consider a smart mix of measures to foster business respect for human rights. A basic measure could be the requirement that business operations specifically and effectively consider the risks of affecting the rights of indigenous peoples and provide guidance to this end.

A. Free, prior and informed consent and the State duty to protect

9. Free, prior and informed consent is a fundamental element of the rights of indigenous peoples, on which rests the ability to exercise and enjoy a number of other rights. States have an obligation to consult and cooperate in good faith in order

[7] See also ILO Convention No. 107 (1957) concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.

[8] Constitution of Nicaragua; *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-American Court of Human Rights, judgment of 31 August 2001, para. 151; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Commission on Human and People's Rights, 276/2003 (4 February 2010), para. 209.

[9] Limitations are expressed in various forms in international human rights laws and are themselves interpreted restrictively.

[10] See the commentary to Guiding Principle 1.

[11] Guiding Principles 2 and 3 (c). See Guiding Principle 7 with regard to State support in conflict-affected areas.

to obtain free, prior and informed consent before the adoption of legislation or administrative policies that affect indigenous peoples (art. 19 of the United Nations Declaration on the Rights of Indigenous Peoples) and the undertaking of projects that affect the rights of indigenous peoples to land, territory and resources, including mining and other utilization or exploitation of resources (arts. 19 and 32 of the Declaration). In some circumstances, there is an obligation to obtain the consent of the indigenous peoples concerned, beyond the general obligation to have consent as the objective of consultation (arts. 10 and 29 of the Declaration).

10. The Declaration ties the enjoyment of many rights that are specific to indigenous peoples to the requirement of seeking to obtain free, prior and informed consent, including the rights to land, culture, development and subsistence, which are often affected by business. Free, prior and informed consent is thus both an indicator of whether the State duty to protect has been observed and an instrument to prevent any adverse impact on human rights. For indigenous peoples, free prior and informed consent is an expression of their right to self-determination and, consequently, to control their own territories, resources and destinies. As such, any free, prior and informed consent process should be as far as possible determined and controlled by the indigenous community in question.[12]

11. The components of free, prior and informed consent have generated much research and debate at the national and regional levels[13] and international human rights bodies have provided useful guidance.[14] While free, prior and informed consent does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree (e.g. International Finance Corporation Performance Standard 7, para. 12), the alleged difficulty of identifying legitimate representatives of indigenous peoples is of particular importance, as is the definition of consent in the context of indigenous customary institutions. Further challenges lie in applying free, prior and informed consent where it involves customary decision-making processes (e.g. if these exclude a significant proportion of the community, such as women) and knowing whether consent given at the outset of an investment could be subsequently withdrawn. States and business enterprises are advised to seek an open and inclusive dialogue, with attention paid to both men and women, including, where applicable, with national federations and umbrella organizations of indigenous peoples. When such an approach is taken, indigenous peoples will themselves identify their legitimate representatives. Likewise, the indigenous peoples affected should determine autonomously how they define and establish consent, while extra attention must be paid to ensuring that women and other potentially disenfranchised groups are included in the process. Mechanisms and procedures should be established to verify that free, prior and informed consent has been sought. This would also serve to

[12] See Doyle and Cariño, p. 17.

[13] An example at the national level is the El Diquís hydroelectric project in Costa Rica (see A/HRC/18/35/Add.8). At the regional level, the Inter-American Court of Human Rights held, in *Saramaka People v. Suriname*, that, in the context of large-scale development projects within the ancestral territories of indigenous and tribal peoples that had a significant impact on their property rights and on the use and enjoyment of such territories, States had a duty to consult them and to obtain their free, prior, informed consent according to their customs and traditions.

[14] See, for example, A/HRC/18/35/Add.8, A/HRC/12/34, A/HRC/24/41, paras. 26-36; general recommendation No. 23 of the Committee on the Elimination of Racial Discrimination on indigenous peoples; and Human Rights Committee communication No. 1457/2006, *Ángela Poma Poma v. Peru*, views adopted on 27 March 2009.

ensure that businesses enterprises are not seen to create divisions within communities in relation to a proposed activity. For these mechanisms to function properly, indigenous peoples must be included in their development. If it is determined that the elements of free, prior and informed consent have not been respected, it may lead to the revocation of consent given. There may be cases where the legitimacy of community representatives is disputed or where communities do not reach informed consent according to their own decision-making modes. In such cases, additional time and effort from all sides are required and responses should be guided by the principle of free, prior and informed consent that flows from the rights of indigenous peoples and that cannot, where it is required by the Declaration, be replaced by seemingly easier ways to obtain consent.

B. State-business nexus

12. State-owned or State-controlled corporations appear to be playing an increasing role in business activities that adversely affect indigenous peoples, including in Latin America, Africa and Asia.[15] Many of these enterprises are investing in resource extraction (mining, forestry or oil drilling) or infrastructure projects (dams, roads, pipelines, etc.) that affect indigenous lands and territories.

13. Large State-driven development programmes are often initiated and planned at senior government levels and implemented in close interaction between government bodies and large private or State-owned corporations. In many cases, such programmes affect territories inhabited or used by indigenous communities and carry a high risk of adverse impact on them. When a State assigns strategic importance to the realization of a given project, indigenous communities are at increased risk of political and economic marginalization.

14. In situations in which business enterprises are owned or controlled by the State, or receive substantial support from State agencies, Guiding Principle 4 provides that States should take additional steps to protect against human rights abuses by those business enterprises in order to meet their duty to protect the rights of indigenous peoples. This could be achieved through the development of a comprehensive policy framework before the planning and development of such programmes. Such a framework should, among other things, ensure the full recognition and operationalization of the right of indigenous peoples to self-determination and to participate in decision-making in matters affecting their rights; their right to determine and develop strategies for exercising their right to development and for the development or use of their lands or territories, or other resources, and the principle of free, prior and informed consent that flows from these rights (arts. 23 and 32 of the Declaration). In addition, the framework should establish effective remedy mechanisms, which should be binding on State authorities and private or State-owned enterprises involved (see section V below).

[15] See Przemyslaw Kowalski and others, "State-owned enterprises: trade effects and policy implications", Trade Policy Paper, No. 147 (Paris, OECD, 2013).

C. Ensuring policy coherence

15. Free trade agreements and bilateral investment agreements entered into by States with the aim of promoting trade and investment have a significant impact on indigenous peoples.[16] Such agreements are reported to have been entered into on many occasions without proper consultation. They often concern investments in extraction of natural resources on indigenous lands and territories, with the risk of adverse impacts on the rights of indigenous communities, affecting livelihoods, culture and the ability of indigenous peoples to decide their own paths to development. In addition, laws enacted and policies implemented further to these agreements can weaken the protection of indigenous lands and resources. In some cases, States have criminalized indigenous protests against such agreements by prosecuting indigenous leaders or by repressing communities that have demonstrated against them (see A/HRC/16/51/Add.3, para. 34).

16. While the aim of free trade agreements and bilateral investment agreements includes increasing economic growth by promoting and protecting international trade and investment, they can weaken the ability of States to regulate domestically and, consequently, restrict their ability to implement international human rights obligations, or to adhere to new obligations or evolving standards.[17]

17. In this regard, Guiding Principle 9 provides that States should maintain adequate domestic policy space to meet their human rights obligations when pursuing investment treaties and contracts. In doing so, States should take into account the specific needs and vulnerabilities of indigenous peoples that are gender sensitive, to avoid restricting their ability to meet their obligations to them. Guiding Principle 8 addresses the need for policy coherence between the business and investment agendas pursued by States and their human rights policies,[18] which is of great relevance to indigenous peoples whose rights are frequently affected by business and investment. States should also refer to the United Nations Conference on Trade and Development investment policy framework for sustainable development[19] and the principles for responsible contracts (A/HRC/17/31/Add.3) for further guidance.

IV. Corporate responsibility to respect the rights of indigenous peoples

18. Guiding Principle 11 provides that business enterprises have a responsibility to respect human rights, meaning that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they

[16] The number of bilateral and multilateral investment agreements has grown from 300 in 1990 to 3,000 in 2010 (see Anthony Aust, *Handbook of International Law*, 2nd ed. (New York, Cambridge University Press, 2010)).

[17] The well-known risks of stabilization clauses led the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to encourage States to ensure a new model of trade agreements that "combine robust investor protections with allowances for bona fide public interest measures, including human rights, applied in a non-discriminatory manner" (see A/HRC/14/27, para. 23).

[18] Guiding Principle 10 makes similar points for States acting as members of multinational institutions that deal with business-related issues.

[19] Available from http://unctad.org/en/PublicationsLibrary/webdiaepcb2012d6_en.pdf.

are involved. Guiding Principle 22 stipulates that, where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. Business enterprises may undertake other commitments, such as ensuring that local communities benefit from employment opportunities, which may contribute to the enjoyment of rights.[20] This does not, however, offset a failure to respect human rights throughout their operations.

19. While business enterprises generally do not have legal obligations directly relating to human rights emanating from international instruments, they will often have legal obligations resulting from State laws that incorporate international standards, or contractual obligations with regard to respecting international standards. Guiding Principle 12 specifies that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights[21] and that business enterprises can affect virtually the entire spectrum of these rights, including the provisions of the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work. Depending on circumstances, business enterprises may need to consider additional standards, such as the Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, where they may have an adverse impact on the rights of individuals, both men and women, belonging to specific groups or populations that require particular attention, such as indigenous peoples.[22]

20. There is a growing understanding among business enterprises of the need to address the legacy of past wrongs inflicted on indigenous communities as a result of business activities, which can result in additional challenges in seeking to address potential adverse impacts going forward.[23] Engaging in dialogue over legacy issues and developing an understanding of any continued impacts can be an important aspect of building a relationship with indigenous communities that ensures respect for their rights and enables effective implementation of the Guiding Principles.

21. Going forward, and in line with free, prior and informed consent, good faith consultation and participation is crucial, in particular in respect of business decisions that will have a substantial impact on the rights of indigenous peoples, including large "community footprint" projects such as mining, agribusiness and infrastructure. In practice, to avoid adverse impacts as well as business risks, businesses need to ensure that the State-led free, prior and informed consent process is adequate. In the absence of an adequate State-led process, a business enterprise needs to consider carefully whether it can proceed with the project without the risk of causing or contributing to adverse impacts on the right of indigenous peoples. The failure to inform, engage and consult with indigenous peoples, both men

[20] See the impact benefit agreements signed by the Inuit of Nunavik and the Raglan mining company before the development of the Raglan mine. Canadian Centre for Community Renewal, *Aboriginal Mining Guide* (Port Alberni, 2009).

[21] The commentary to Guiding Principle 23 states that, in conflict-affected areas, business enterprises should treat the risk of being complicit in gross human rights abuses committed by other actors (e.g. security forces) as a legal compliance issue.

[22] See the upcoming business reference guide of the Global Compact on the Declaration on the Rights of Indigenous Peoples, available from www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html.

[23] See Doyle and Cariño, p. 47.

and women, not only undermines the ability of a business enterprise to respect rights (as it may not be aware of its potential or actual impacts), but also fosters mistrust between communities and business enterprises and can lead to the disruption of operations.

A. Policy commitment

22. Guiding Principle 15 states that, in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances. As a basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meeting this responsibility through a high-level public statement, making that commitment a clear, overarching policy that will determine their actions. The policy commitment is distinct from the operational policies and procedures necessary to embed the commitment throughout the business enterprise and that help to translate the high-level commitment into operational terms.[24]

23. Guiding Principle 16 clarifies how this policy commitment should be developed. In the case of potential impacts on indigenous peoples, business enterprises should translate and make the policy commitment easily available to potentially affected indigenous groups, for example through outreach meetings and consultations. In making the policy commitment available and known, business enterprises should take into account differences in language, literacy levels (in particular among women and vulnerable groups) and cultural preferences for the way in which information is transmitted and received. It may be that, in particular circumstances, business enterprises should be further encouraged to include specific provisions on the relationship with indigenous peoples in order to acknowledge the specificities of their situations. In such cases, the clauses should be developed through a participatory process involving indigenous representatives and human rights experts and should be adopted, as with all policy commitments, at the most senior level.

24. A key element of such a policy commitment should be respect for the specific rights of indigenous peoples, in particular respect for collective rights to lands and resources in accordance with their own customary laws, traditions and practices. Any policy commitment specifically referencing indigenous peoples should also lay out principles for engagement with indigenous communities, including good faith consultations, and when and how the business enterprise will seek to ensure respect for the principle of free, prior and informed consent flowing from the rights of indigenous peoples.[25]

25. A number of intergovernmental agencies and international financial institutions have incorporated free, prior and informed consent into their policies and programmes on indigenous peoples. Examples include a strategy for indigenous development and an operational policy on indigenous peoples adopted by the Inter-American Development Bank in 2006 and a guidance note on indigenous peoples adopted by the European Bank for Reconstruction and Development in 2010. In May 2013, the

[24] Office of the United Nations High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: an Interpretive Guide* (Geneva, 2012), p. 26.

[25] See article 18 of the Declaration on the Rights of Indigenous Peoples and the ruling of the Canadian Supreme Court in *Delgamuukw v. British Columbia*.

International Council on Mining and Metals adopted a policy statement on indigenous peoples, with a commitment to work to obtain the consent of indigenous peoples for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of indigenous peoples and which are likely to have significant adverse impacts on indigenous peoples.[26]

26. Beyond the development of the policy commitment, a review of corporate best practice suggests that the approaches to embedding the commitment into relevant policies and procedures set out below are conducive to the effective implementation of the commitment.

27. First, business enterprises should, through their policy commitment, seek to build a work environment that is culturally aware, gender-sensitive and inclusive and insist on an adequate understanding by employees and contractors of the specificities of indigenous peoples and respect for the rights, cultures and customs of indigenous peoples within the communities in which the projects are located. In this regard, business enterprises should organize specific training as an obligatory part of the contracting procedure.

28. Furthermore, in their policy commitment, business enterprises should recognize that land rights and tenure, including land use and ownership rights based on customary laws, traditions and practices, can be the root of disputes between companies and indigenous peoples. They should identify ways to prevent such disputes and engage in reasonable efforts to prevent them and, if they occur, resolve them through culturally appropriate mediation, using third parties that are trusted by indigenous peoples.

29. With regard to consultation (see article 18 of the Declaration), business enterprises should include in their policy statement a requirement to ensure that information is conveyed in a manner that can be understood by both men and women. Business enterprises need to be aware of the imbalance of power and take specific measures to address this, so that they and the community meet on an equal footing.

B. Human rights due diligence

30. Guiding Principles 17 to 21 define the parameters for human rights due diligence to be undertaken by business enterprises in order to identify, mitigate and account for how they address adverse human rights impacts. The commentary to the Guiding Principles states that business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, such as indigenous peoples, and that they should seek to understand the concerns of potentially affected stakeholders by consulting them directly. Guiding Principle 19 states that, to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from impact assessments across relevant functions and processes and take appropriate action. This action will vary according to whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely through a business relationship, and the extent of its leverage in addressing the adverse impact.

[26] Available from www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining.

31. Given the specificities of adverse impacts on indigenous peoples, generic environmental, social and health impact assessments may not be sufficient to fully identify and address potential human rights risks, especially with regard to their collective rights to land, resources and self-determination contained in the Declaration (see A/66/288, paras. 93-102). The rights of indigenous peoples can be adversely affected by acts of commission and omission. There may also be unintended consequences that may not be easily identified from standard impact assessments. The requirement of meaningful consultation with indigenous peoples in the human rights due diligence process may therefore be particularly important to enable business enterprises to identify the full range of actual and potential impacts and in particular to identify and address gender-differentiated impacts. Business enterprises should ensure that impact assessment processes provide for an evidence-based and gender-disaggregated review of socio-anthropological issues pertaining to any adverse impacts on indigenous peoples living in areas affected by a project. Furthermore, business enterprises should ensure that impact assessments are sufficiently robust to detect differentiated impacts on possibly vulnerable groups who may sustain greater adverse impacts from the same operation owing to political, economic or social marginalization within the indigenous community.

V. Access to effective remedy

32. Guiding Principle 25 clarifies that States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that, when business-related human rights abuses occur, those affected have access to effective remedy. This includes considering ways to reduce legal, practical and other relevant barriers, such as those based on gender. Of particular relevance to indigenous peoples are the provisions for remedies included in a number of articles in the Declaration and in ILO Conventions Nos. 169, 29 (1930) on Forced Labour and 111 (1958) on Discrimination (Employment and Occupation). The Inter-American Court of Human Rights[27] has recognized the need for States to ensure access of indigenous peoples to justice in a collective manner, in accordance with their culture. In doing so, it emphasized that judicial remedies that are only available to persons who claim the violation of their individual rights to private property are not adequate or effective to repair alleged violations of the right to communal property of indigenous and tribal peoples and other forms of discrimination that could lead to a denial of access to remedy.[28]

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[27] The Court has affirmed that indigenous peoples have the right to the existence of effective and prompt administrative mechanisms to protect, guarantee and promote their rights over ancestral territories. States must establish administrative procedures to resolve land claims in such a way that these peoples have a real opportunity to recover their lands. Such procedures should be accessible and simple and the mechanisms should be granted the necessary technical and material conditions to provide a timely response to the requests (see *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs. Judgment of 17 June 2005, Series C, No. 125, para. 102).

[28] Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007, series C, No. 172, para. 179.

A. State-based judicial mechanisms

33. Guiding Principle 26 provides that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. The commentary to the Guiding Principles recognizes that legal barriers to access to remedy could include instances in which certain groups, such as indigenous peoples, are excluded from the same level of legal protection of their human rights that applies to the wider population; and that individuals from groups at heightened risk of vulnerability or marginalization can face additional impediments to using such mechanisms.

34. Additional measures may therefore be required to ensure non-discrimination against indigenous peoples in the judicial sphere through the identification and removal of obstacles to equal access, including in the use of indigenous languages. States should ensure that legal systems recognize indigenous peoples as subjects of international law and take into account the social realities of their specific status. This may require States to allow and require courts to recognize the customary laws, traditions and practices of indigenous peoples and customary ownership over their lands and natural resources in judicial proceedings (see A/HRC/24/50).

B. State-based non-judicial mechanisms

35. The Guiding Principles recognize that State-based non-judicial mechanisms can play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses.[29] Non-judicial mechanisms may be more accessible, imply significantly lower costs and pursue a dialogue-oriented approach, potentially allowing for the speedier resolution of a dispute. To ensure their effectiveness, non-judicial mechanisms should meet the criteria in Guiding Principle 31 (namely that they be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning). While the mechanisms described herein can play an important role for the purposes of accountability, the extent to which they comply fully with the criteria laid down in Guiding Principle 31 should be explored further.

36. National human rights institutions or ombudsman offices have an important role to play in addressing the grievances of indigenous peoples regarding business-related human rights abuses, in particular those relating to the exploitation of natural resources. As with judicial mechanisms, States should consider ways to address any imbalance between the parties to business-related human rights claims and any additional barriers to access faced by indigenous peoples. This could arise when, for example, mechanisms are unable, owing to lack of funding or human resources, to effectively reach out to all those affected across the entire territory of the State, thereby hampering access by indigenous peoples to the mechanism, or where language barriers impede access. The mechanisms should be granted adequate human, financial and technical resources (including training and expertise in business-related impacts) and their capacity to monitor effectively human rights impacts on indigenous peoples, including those arising from business, should be

[29] Commentary to Guiding Principle 27.

increased. They should be mandated to investigate complaints; verify the accuracy of information submitted by the parties, including, where necessary, by undertaking site visits; reach a determination as to whether rights have been violated; and make their decisions public. The mechanisms should be further mandated to make recommendations beyond a particular case, such as encouraging changes in State or corporate policies. They should be mandated to follow up on their decisions and States should carry out awareness-raising campaigns among indigenous peoples for these remedies. Lastly, the mechanisms should be required to take guidance from the Guiding Principles when investigating individual complaints relating to business-related impacts on the rights of indigenous peoples.

C. Extraterritorial activities of business enterprises

37. The commentary to the Guiding Principles acknowledges that, at present, States are not generally required under international human rights law[30] to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.[31] Nor are they prohibited from doing so, however. Many States have recognized the strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad and have adopted a number of approaches in this regard. This is particularly important in conflict-affected areas, where the host State may be unable to protect human rights adequately owing to a lack of effective control. Where transnational corporations are involved, their home States have a role to play in assisting those corporations and their host States to ensure that businesses are not involved with human rights abuses.[32] These approaches have sought in part to address the challenges faced by victims in getting access to effective remedy in their home country. As with all grievance mechanisms, States should take into account the specificities of indigenous peoples and ensure that any barriers to their access to the mechanisms are addressed and removed. The commentary to Guiding Principle 26 identifies some of the legal, practical and procedural barriers to access to judicial remedy, which include situations in which claimants face a denial of justice in a host State and cannot gain access to home State courts, regardless of the merits of the claim.

38. The measures that have been adopted range from international agreements, which require States to exercise extraterritorial jurisdiction over corporations,[33]

[30] The Committee on Economic, Social and Cultural Rights, in its general comment No. 15, and the Committee on the Elimination of Racial Discrimination, in concluding observations (CERD/C/CAN/CO/19-20 and CERD/C/NOR/CO/19-20), have called for extraterritorial jurisdiction over business enterprises.

[31] See also the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.

[32] Commentary to Guiding Principle 7. See also General Principle 3.2 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Rome, Food and Agriculture Organization of the United Nations, 2012).

[33] Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; articles 5 (2) and 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and article 9 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance.

to national laws and measures with extraterritorial implications[34] to State-based non-judicial mechanisms such as the OECD Guidelines for Multinational Enterprises.

39. The OECD Guidelines are recommendations by Governments covering all major areas of business ethics, including corporate steps to obey the law and observe internationally recognized standards. The Guidelines were updated in 2011 and have a human rights chapter aligned with the Guiding Principles. They are supported by a mechanism of national contact points,[35] established by Governments that adhere to the Guidelines to promote and implement them and assist business enterprises and their stakeholders to take appropriate measures for further observance of them. National contact points provide a mediation and conciliation platform that has been used by indigenous peoples for resolving practical issues that may arise in the implementation of the Guidelines.[36]

40. Currently, companies can voluntarily decide whether to participate in a mediation. Some stakeholders have suggested that national contact points should have further tools at their disposal to encourage companies to engage in mediation in cases brought before them under the "specific instances" procedure and make appropriate recommendations on the implementation of the Guidelines in situations involving indigenous peoples.

D. Non-State-based grievance mechanisms and grievance mechanisms at the operational level

41. Guiding Principle 28 provides that States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms. Guiding Principle 29 states that business enterprises should establish or participate in effective grievance mechanisms at the operational level for individuals and communities who may be adversely affected. Given the requirement that access be provided to an effective remedy, the performance of grievance mechanisms at the operational level needs to be appropriately assessed. The development of performance indicators that can be used by stakeholders to encourage the proper functioning of grievance mechanisms is important and can be used by stakeholders to understand how grievance mechanisms at the operational level are working and to hold business enterprises accountable.

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[34] For example, a reporting requirement imposed on the corporate parent with regard to a company's overall human rights impacts, which may include those of its overseas subsidiaries. The Burma Responsible Investment Reporting Requirements requires any United States company investing more than $500,000 in Myanmar to report on its human rights impacts according to the Guiding Principles.

[35] They also include a new provision regarding stakeholder engagement. OECD is exploring the potential for a user guide for stakeholder engagement and the extractive industry under the Guidelines.

[36] See, for example, the complaint brought by Survival International with the national contact point of the United Kingdom of Great Britain and Northern Ireland against Vedanta Resources, a British mining corporation. In its statements, the national contact point confirmed the substance of the allegations and said that Vedanta Resources had acted in breach of the OECD Guidelines. The national contact point recommended that the company should work with the Dongria Kondh people to explore alternatives to resettlement and to include a human rights impact assessment in its project management process. The Supreme Court of India recently issued a ruling in which it effectively banned Vedanta Resources from constructing the mine without the consent of the Dongria Kondh.

42. Experience also suggests that the development of grievance mechanisms cannot be separated from the broader dialogue and engagement with indigenous communities.[37] Such engagement should be based on acknowledgement of the status of indigenous peoples as collective rights holders and, where required by the Declaration, be framed in a free, prior and informed consent process. In this regard, the process itself can provide an important remedial mechanism (see, in particular, articles 28 and 32 of the Declaration). Given the recognition in the Declaration of the specificities of the laws and customs of indigenous peoples, business enterprises should consider identifying adequate and culturally and gender-appropriate remedy mechanisms as an integral part of any contractual relationship with indigenous peoples.

43. The Guiding Principles require that grievance mechanisms at the operational level reflect the criteria in Principle 31 to ensure their effectiveness in practice. Such mechanisms should furthermore be based on engagement and dialogue, implying consultation with the stakeholder groups for whose use they are intended and focusing on dialogue as a means to address and resolve grievances. A grievance mechanism can serve its purpose only if the people it is intended to serve know about it, trust it and are able to use it. In this regard, it is important for grievance mechanisms to be constructed in a gender-sensitive manner.

44. Various initiatives are being undertaken by business enterprises, industry associations and multi-stakeholder groups to further advance good practices. The Working Group recalls its continuing project to build capacity to enhance access to judicial and non-judicial remedy in the area of business and human rights (see A/HRC/23/32, para. 64). The following elements have emerged as good practices for business enterprises in handling grievances from indigenous peoples. Mechanisms should be developed in the context of a consultation process with the indigenous community and specific attention should be paid to ensuring accessibility, responsiveness and local ownership of the mechanism. This can help to ensure that it meets the needs of indigenous peoples, that it will used in practice and that there is a shared interest in ensuring its success. This is particularly important for indigenous peoples, who continue to suffer from power imbalances and where the legitimacy of any grievance mechanism will be crucial. Capacity-building should be undertaken to develop the relevant legal knowledge and skills and the grievance log should be accessible to the parties, ensuring a basic starting principle in favour of transparency, but with due regard for the protection of victims in cases where reprisals or pressure are likely. Lastly, to ensure the independence and legitimacy of grievance mechanisms, any periodic review of the mechanism should incorporate feedback from indigenous communities.

[37] Further to broad protests, Sakhalin Energy Investment Company Ltd. negotiated a development plan for the indigenous peoples of Sakhalin, including a distinct community grievance mechanism to complement its existing grievance mechanism. That was as a result of consultations that noted the specific nature of complaints raised by indigenous peoples, more often relating to environmental harm and impacts on their traditional livelihoods. It also set up a community liaison network, with one person tasked specifically with liaising with indigenous persons, to ensure daily communication with communities, including on grievances. See Natalya Novikova and Emma Wilson, "The Sakhalin-2 project grievance mechanism, Russia", in Emma Wilson and Emma Blackmore, eds. *Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms* (London, International Institute for Environment and Development, March 2013), p. 88.

E. Customary institutions as non-judicial grievance mechanisms

45. Indigenous peoples have developed a wealth of dispute resolution mechanisms and judicial systems based on their respective customary laws, traditions and practices. While the primary use for indigenous dispute resolution mechanisms is the resolution of disputes and grievances between members of the same community, cases have been documented where such mechanisms have been successfully applied to remedy abuses of the rights of indigenous peoples by business enterprises. Increasingly, international human rights practice and jurisprudence recognize the importance of the customary laws, traditions and practices of indigenous peoples as a remedial instrument. Studies suggest that their use is more efficient in addressing the grievances of indigenous peoples than sole reliance on national legal systems or other non-judicial remedy mechanisms.[38]

46. This approach has often been described as participatory and dialogue-oriented and could prove a useful additional mechanism for business enterprises to build trust with indigenous peoples by recognizing the importance that their customary laws, traditions and practices place on restoring peace and harmonic relations. A settlement based on customary laws, traditions and practices has the potential to ensure sustainable, longer-lasting results acceptable to all involved parties, including business enterprises, which may be less likely to result from a judicial process. Furthermore, customary grievance mechanisms are often significantly easier to gain access to and are free of the costs associated with the judicial system.

47. For indigenous peoples, using customary laws, traditions and practices as a remedy instrument in relation to businesses operating in their territories offers the potential of feeling empowered over their own destiny and fully engaged in decision-making on issues relating to their resources and territories. At the same time, such an approach places a very substantial responsibility on indigenous communities, including ensuring that the mechanism is in conformity with the effectiveness criteria laid out in Guiding Principle 31.

F. International and regional human rights mechanisms

48. As noted in the commentary to Guiding Principle 28, the complaints procedures provided by the Constitution of ILO,[39] United Nations treaty monitoring bodies[40]

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[38] See Maria Roda L. Cisnero, "Rediscovering olden pathways and vanishing trails to justice and peace: indigenous modes of dispute resolution and indigenous justice systems" in *A Sourcebook on Alternatives to Formal Dispute Resolution Mechanisms* (Philippines, Justice Reform Initiatives Support Project, 2008).

[39] Article 24 of the Constitution of ILO has been used by indigenous peoples in cases of State infringement of their obligations under various articles of Convention No. 169 (including articles 6, 14 and 15) in the context of business activities.

[40] In addition to examples highlighted herein, the Committee on the Elimination of Racial Discrimination has adopted concluding observations in which it has acknowledged racial discrimination against indigenous peoples as a consequence of land policies and extractive industries activities; urged States to adopt policies and legislation to end such discrimination; and noted the need for States to develop consultation and obtain the free, prior and informed consent of indigenous peoples in the case of the exploitation of natural resources on their lands and territories (CERD/C/CHL/CO/15-18; CERD/C/PER/CO/14-17; CERD/C/ARG/CO/19-20; CERD/C/PAN/CO/15-20; CERD/C/RUS/CO/19).

and regional human rights mechanisms are also deemed to be non-State-based grievance mechanisms. In particular, the consideration of individual communications by United Nations treaty bodies has provided an avenue for remedy for indigenous peoples, the challenges that this has created for the treaty bodies notwithstanding. States should raise awareness of, or otherwise facilitate access to, such international and regional monitoring bodies, alongside the mechanisms provided by the State itself.

G. Accountability mechanisms of multilateral development banks

49. Multilateral development banks provide indigenous peoples with the possibility of gaining access to their accountability mechanisms in order to raise concerns or lodge a complaint about projects supported by the banks that affect them or their environment.[41] These mechanisms have proved to be a means of holding the banks accountable for actions that cause or threaten to cause harm to affected complainants or the environment and for actions that are inconsistent with the banks' own operational policies and procedures,[42] including safeguard policies created for the purpose of preventing harm to indigenous peoples.[43]

H. Effectiveness of remedy and indigenous peoples

50. Guiding Principle 31 establishes criteria to assess whether a particular judicial or non-judicial remedy can be deemed to be effective.

51. First, to meet the requirement of legitimacy, remedy mechanisms should be set up in such a way as to fully acknowledge the status of indigenous peoples as having the right to full enjoyment, as a collective or individuals, of all human rights and freedoms as recognized in international human rights law and taking into account rights and standards associated with this status. Second, remedy mechanisms should afford due recognition to the role of the customary laws, traditions and practices of indigenous peoples and the authority of their governance institutions, both for substantive and procedural reasons, while ensuring that they respect the rights and freedoms of others. Such recognition should acknowledge that existing internal grievance mechanisms of indigenous peoples may be empowered to address violations occurring within territories under their traditional jurisdiction. In this regard, the Working Group emphasizes that any non-judicial grievance mechanism, including traditional mechanisms of indigenous peoples should be rights-compatible (in process and outcome).

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[41] See Leonardo A. Crippa, "Multilateral development banks and the human rights responsibility", *American University International Law Review*, vol. 25, No. 3 (2010).

[42] See Daniel D. Bradlow, "Private complainants and international organizations: a comparative study of the independent inspection mechanisms in international financial institutions", *Georgetown Journal of International Law*, No. 36 (2005).

[43] The International Finance Corporation created a compliance advisory ombudsman with a compliance, advisory and dispute resolution mandate with regard to its Performance Standards, including Performance Standard 7 on Indigenous Peoples. The Inter-American Development Bank set up an independent consultation and investigation mechanism with a similar mandate and an added "judicial clause" that prohibits admissibility of complaints if they "raise issues under arbitral or judicial review by national, supranational or similar bodies".

52. Furthermore, in line with the requirement of accessibility in Guiding Principle 31, remedy mechanisms should be specifically accessible to indigenous peoples, including both men and women. Accessibility includes their physical accessibility, e.g. the place and timing of proceedings should be chosen in a manner that allows indigenous representatives to be physically present. As indigenous peoples often settle in remote, peripheral regions of their respective States, ensuring physical accessibility of remedy mechanisms often requires special measures. It also includes linguistic, cultural and gender accessibility.

53. More broadly, and although the Guiding Principles do not tackle the issue of the content of the remedy per se, article 28 of the Declaration elaborates what would amount to a rights-compatible outcome of grievance mechanisms for indigenous peoples when their lands have been confiscated, taken, occupied or damaged without their free, prior and informed consent. Article 11 of the Declaration states that indigenous peoples are also entitled to redress with regard to cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent.

VI. Conclusions and recommendations

A. Conclusions

54. **The United Nations Guiding Principles on Business and Human Rights provide an authoritative guide for States, business enterprises and indigenous peoples as to how to meet international standards and enhance their practices with regard to preventing and addressing adverse business-related impacts on the human rights of indigenous peoples, so as to achieve tangible results. As highlighted therein, particular attention should be paid throughout to the rights, needs and challenges faced by those at heightened risk of becoming vulnerable or marginalized. This is crucial for indigenous peoples, who are often disproportionately adversely affected by business activities. States and business enterprises should therefore address the rights of indigenous peoples when meeting their respective State duty to protect against human rights abuses and the corporate responsibility to respect human rights. The Working Group urges relevant bodies and stakeholders to conduct further studies into the effectiveness of existing remedy mechanisms available to indigenous peoples, including judicial and non-judicial mechanisms, extraterritorial remedies and indigenous dispute resolution modes, with the goal of developing fact-based comprehensive guidance for States, international institutions, business enterprises and indigenous peoples.**

B. Recommendations

55. **States should:**

(a) **Consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and pursue a range of measures to fully implement the United Nations Declaration on the Rights of Indigenous Peoples, in particular for home States of transnational corporations operating in territories used or inhabited by indigenous peoples, even if no indigenous populations reside within their borders;**

(b) Use the Guiding Principles to clarify the duties and responsibilities of actors in preventing and addressing the human rights impacts of businesses on the rights of indigenous peoples;

(c) State the expectation that all business enterprises domiciled in a State territory respect human rights throughout their operations; set expectations and obligations of business enterprises and other actors in addressing business-related impacts on the human rights of indigenous peoples, in particular in conflict-affected areas; encourage business enterprises to communicate and engage on their policies and procedures for addressing their human rights impacts and be accessible to all, including both men and women;

(d) Ensure that strengthened monitoring and enforcement mechanisms are put in place to prevent and address any adverse human rights impacts of businesses, including integrating and applying gender-sensitive human rights considerations into relevant national laws, policies, regulations and contracts, such as bilateral investment treaties and agreements with host Governments, and in the granting of concessions for the exploration or extraction of natural resources;

(e) Ensure that adequate policy space to meet human rights obligations relating to the rights of indigenous peoples is maintained when pursuing investment treaties or contracts, by taking into account the specific needs and vulnerabilities of indigenous peoples;

(f) Ensure that indigenous peoples who are actually or potentially affected by business activities have complete and timely access to all relevant information to ensure that they are able to participate effectively in key decisions that affect them and that meaningful gender-sensitive consultations with indigenous peoples become an essential component of all contracts entered into with international investors;

(g) When developing a national action plan for the implementation of the Guiding Principles, consider the particular impacts of business activities on indigenous peoples and the necessary remedy measures;

(h) For guidance on investment contracts, refer to the United Nations Conference on Trade and Development investment policy framework for sustainable development and the principles for responsible contracts and integrate the management of human rights risks into State-investor contract negotiations, in particular as relevant to the rights of indigenous peoples;

(i) If States members of OECD, ensure that national contact points for the OECD Guidelines for Multinational Enterprises are independent, impartial and fully resourced to address the grievances of indigenous peoples. This includes knowledge of the rights of indigenous peoples including free, prior and informed consent, and familiarity with indigenous modes of decision-making and customary laws, traditions and practices, as well as making appropriate recommendations on implementation of the OECD Guidelines in cases involving indigenous peoples;

(j) Home States of multinational enterprises should consider ways to ensure that indigenous peoples affected by the operations of those enterprises abroad have access to effective remedy;

(k) Develop a comprehensive policy framework before the planning and development of projects involving business enterprises owned or controlled by the State, or receiving substantial support from State agencies, setting out additional steps to protect the rights of indigenous peoples;

(l) Consider ways to ensure that policies and regulations in place enable the effective implementation of the requirements for free, prior and informed consent in the context of business activities;

(m) Review and amend existing remedial mechanisms, as appropriate, to ensure alignment with the Guiding Principles and assess their appropriateness and effectiveness for protecting the rights of indigenous peoples;

(n) Reinforce the capacity of judges, lawyers and prosecutors to address grievances brought by indigenous peoples relating to business activities and ensure that mandatory training for judges and lawyers covers gender-sensitive international human rights obligations, including standards relating to business and human rights and indigenous peoples;

(o) Devote adequate human, financial and technical resources to national human rights institutions and increase their capacity to effectively monitor and tackle impacts on the rights of indigenous peoples;

(p) Carry out awareness-raising campaigns, together with relevant stakeholders, to allow indigenous peoples within the State jurisdiction to avail themselves of the legal and non-legal remedies available to assist them;

(q) Build the capacity of indigenous peoples to develop their own representative structures, to ensure they are able to participate effectively in key decisions that affect them.

56. **Business enterprises should:**

(a) Comply with the responsibility to respect human rights, including by adopting a gender-sensitive human rights policy, carrying out human rights impact assessments with regard to current and planned operations and addressing any adverse human rights impacts that they cause, contribute to or are linked to, including by exercising leverage in business relationships to address adverse impacts and paying particular attention to any operations in the territories and lands of indigenous peoples;

(b) Commit themselves to respecting the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 in policy commitments, human rights due diligence processes and remediation processes;

(c) Ensure that grievance mechanisms at the operational level reflect the criteria in Guiding Principle 31 and that they are based on gender-sensitive engagement and dialogue, by consulting indigenous peoples and focusing on dialogue as a means to address and resolve grievances;

(d) Consult and engage regularly and directly with men and women in the communities in which operations are conducted and inform them as to the way their lifestyles, livelihoods and human rights may be affected, paying due attention to the various methods of informing and consulting that may be required, owing to culture and language, as distinct from the rest of the population;

(e) Share experiences broadly with other enterprises within and across sectors in meeting the responsibility to respect the rights of indigenous peoples and encourage all sectors to develop guidance within their industries.

57. **Indigenous peoples should:**

(a) Ensure that decision-making protocols with regard to any free, prior and informed consent processes are developed, described and strengthened through their own representative institutions and in accordance with their own procedures and, where possible, codified in a way that brings greater specificity to assist in their application, that such law(s) are understandable and accessible to business enterprises and States and that those processes and laws are fully in conformity with international human rights law;

(b) Consider strengthening their institutions, through their own decision-making procedures, in order to set up representative structures, including both men and women, that facilitate the relationship with business activities, in particular in relation to the processes of consultation and of free, prior and informed consent when these activities may have an impact on or directly affect them or their lands and resources, and with those dealing with their right to redress or compensation and/or benefit-sharing from the same activities.